

**APPENDIX F**

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION TREATMENT PLAN**

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### NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION TREATMENT PLAN

*Draft 09/99*

## A COMPREHENSIVE PLAN FOR COMPLIANCE WITH THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT AND IMPLEMENTING REGULATIONS

### AT THE

### U.S. DEPARTMENT OF ENERGY HANFORD SITE SOUTH-CENTRAL WASHINGTON

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## 1.0 INTRODUCTION

A significant part of the U.S. Department of Energy (DOE) overall resource management and stewardship responsibilities on DOE-owned and other lands that are impacted by DOE programs involves protection and preservation of cultural resources. Under this stewardship umbrella, a critical component of a comprehensive and effective cultural resource management (CRM) effort involves compliance with a number of federal historic preservation statutes and regulations. This document includes relevant background information and an action plan for compliance with one of the more recent of these statutes, the *Native American Graves Protection and Repatriation Act* (NAGPRA) (Public Law 101-601; 25 USC 3001-3013; 11/16/1990) and the subsequent implementing regulations, *Native American Graves Protection and Repatriation Regulations* (43 Code of Federal Regulations Part 10, revised as of 10/1/97) (hereafter cited as 43CFR10) at the DOE Hanford Site in south central Washington.

### 1.1 Background

The Hanford Site is situated in south central Washington, and occupies an area of approximately 560 square miles. The site is owned by the U.S. Government and administered by the U.S. Department of Energy, Richland Operations Office (DOE-RL). The area lies in the Pasco Basin of the Columbia Plateau, directly north of the confluence of the Columbia River with the Snake, Walla Walla, and Yakima Rivers. Parts of the Hanford Site fall into three counties – Grant, Benton, and Franklin, the boundaries of which are separated by the Columbia River flowing through the site. The origin of the Hanford Site began in 1943 when the area was selected by the U.S. Army Corps of Engineers Manhattan District as the location for the nation's first full-sized plutonium production reactors. Today, after several decades of participation in the defense nuclear materials production programs the Hanford Site has entered an era of remediation and environmental restoration, along with emphasis on nonmilitary applications of nuclear energy.

Prehistoric and historic Native American occupation of the land now included in the Hanford Site was intensive prior to the taking of the area by the U.S. Government in 1943. The Wanapum occupied and used areas of the landscape right up to the seizure. Use of the area by these people over a period several millennia resulted in the existence of numerous archaeological sites, particularly along the banks of the Columbia River. Associated with many of these locations are Native American burials and cemetery locations. As discussed in other Hanford cultural resource documents, identification and protection of known Native American cemetery locations have been a focal point of Native American and U.S. Government interactions since 1943. For more than fifty years, Wanapum leaders have continually pressed for protection of cemeteries they knew to be located on the Hanford Site. Additionally, many other burial and cemetery locations exist along the banks of the Columbia River and on its islands; many of these have come to light while many others remain to be identified. In short, concern for Native American burials and cemeteries and meeting associated NAGPRA requirements have been and will continue to be a significant cultural resource issue at Hanford.

## **1.2 Related DOE and DOE-RL Cultural Resource Documents**

In addition to NAGPRA and 43CFR10 themselves, there are several other departmental and Hanford Site programmatic documents that provide either relevant background or additional guidance for potential actions under NAGPRA. These include the following:

U.S. Department of Energy, *American Indian & Alaskan Native Tribal Government Policy*

U.S. Department of Energy Cultural Resource Information Brief, *Potentially Radiologically Contaminated Non-Recent Human Remains and Associated Funerary Object*. Office of Environmental Policy and Assistance. August 1999.

U.S. Department of Energy, Richland Operations *Hanford Cultural Resources Management Plan: A Preservation and Protection Strategy (HCRMP)*. DOE-RL-98-10, Revision 2.

U.S. Department of Energy, Richland Operations, *National Register of Historic Places Multiple Property Documentation Form – Historic, Archaeological, and Traditional Cultural Properties of the Hanford Site, Washington*. DOE-RL-97-2. (Specifically “The Prehistoric Period of the Hanford Site and Associated Portion of the Columbia River, Washington, circa 10,000 B.P. – A.D. 1805,” pp. 2.1 – 2.56 and “The Ethnographic/Contact Period of the Hanford Site, Washington, Lewis and Clark 1805 – Hanford Engineer Works, 1943,” pp. 3.1 – 3.154.

Nickens, P.R. 1998. *Tribal Cultural Resource Studies at the Hanford Site, South-central Washington*, PNNL-12032. (Specifically “Native American Involvement at the Hanford Site: 1943 to the Present,” pp. 1-18).

## **2.0 NAGPRA AND THE REGULATIONS**

Passed by Congress in the Fall of 1990, NAGPRA, along with the later issued implementing regulations, provided for disposition or repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in a federal agency’s possession or under its control. Further, the act included provisions to ensure that human remains and other objects covered under the statute that might come to light, either via intentional excavations of Native American sites or as chance discoveries receive protection. Central to all processes required under the act is consultation between the federal agency and Indian tribes, Native Hawaiian organizations, lineal descendants, and traditional Native American religious leaders that have an established cultural interest in specific human remains or other

materials. Because NAGPRA and the regulations have spawned their own lexicon within cultural resources management, it is useful to include herein those definitions that apply to this plan. These are detailed below.

## 2.1 Pertinent definitions from 43CFR10.2 (slightly modified to conform to conditions of aboriginal occupation of the Hanford Site environs).

**Indian tribe** means any tribe, band, nation, or other organized Indian group or community of Indians, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**Lineal descendant** means an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or by the common law system of descent to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under NAGPRA regulations.

NAGPRA covers four types of Native American objects. The term **Native American** means of, or relating to, a tribe, people, or culture indigenous to the United States.

- (1) **Human remains** means the physical remains of the body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, as defined below, must be considered as part of that item.
- (2) **Funerary objects** means items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains. Funerary objects must be identified by a preponderance of the evidence as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or Native Hawaiian organization or as being related to specific individuals or families or to known human remains. The term burial site means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which, as part of the death rite or ceremony of a culture, individual human remains were deposited, and includes rock cairns or pyres which do not fall within the ordinary definition of gravesite.

**Associated funerary objects** means those funerary objects for which the human remains with which they were placed intentionally are also in the possession or control of a museum or Federal agency. Associated funerary objects also mean those funerary objects that were made exclusively for burial purposes or to contain human remains.

**Unassociated funerary objects** means those funerary objects for which the human remains with which they were placed intentionally are not in the possession or control of a museum or Federal agency. Objects that were displayed with individual human remains as part of a death rite or ceremony of a culture and subsequently returned or distributed according to traditional custom to living descendants or other individuals are not considered unassociated funerary objects.

- (3) **Sacred objects** means items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. While many items, from ancient pottery sherds to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were

devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony.

The term **traditional religious leader** means a person who is recognized by members of an Indian tribe as: (1) Being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe, or (2) Exercising a leadership role in an Indian tribe based on the tribe's cultural, ceremonial, or religious practices.

- (4) **Objects of cultural patrimony** means items having ongoing historical, traditional, or cultural importance central to the Indian tribe itself, rather than property owned by an individual tribal member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe at the time the object was separated from the group. Objects of cultural patrimony include items such as Zuni War Gods, the Confederacy Wampum Belts of the Iroquois, and other objects of similar character and significance to the Indian tribe as a whole.

**Cultural affiliation** means that there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence -- based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion.

**Federal lands** means any land other than tribal lands that are controlled or owned by the United States Government United States. "Control," as used in this definition, refers to those lands not owned by the United States but in which the United States has a legal interest sufficient to permit it to apply these regulations without abrogating the otherwise existing legal rights of a person.

**Tribal lands** means all lands which: (1) Are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States; or (2) Comprise dependent Indian communities as recognized pursuant to 18 U.S.C. 1151

**Summary** means the written description of collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony required by Sec. 10.8 of 43CFR10.

**Inventory** means the item-by-item description of human remains and associated funerary objects.

**Intentional excavation** means the planned archeological removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (c) of NAGPRA.

**Inadvertent discovery** means the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands.

## 2.2 Consultation Requirements

Consultation between DOE and affected Indian tribes at the Hanford Site occurs on a regular basis and is coordinated by the Indian Nations Program at DOE-RL. DOE-RL's involvement with Indian tribes is guided by the DOE American Policy, in conjunction with various historic preservation statutes, regulations, and presidential executive orders. Under this program, DOE-RL interacts and consults on a direct basis with three federally recognized tribes affected by operations at the site, including the Nez

Perce Tribe, Confederated Tribes of the Umatilla Reservation, and the Yakama Nation. In addition, the Wanapum, who still live adjacent to the site, are a non-federally recognized tribe who maintain strong cultural ties to the Hanford landscape and are also consulted on cultural resource issues in accordance with DOE-RL policy and relevant legislation.

Within this general Hanford consultation framework, the 1990 NAGPRA statute requires interaction between a Federal agency and Indian tribes or individuals under a number of actions. These conditions are summarized in Table 1.

Table 1. Required interactions between DOE and Indian tribes under NAGPRA.

<b>Type of Communication</b>	<b>When?</b>	<b>Who?</b>	<b>Required by</b>
Notification	After completing NAGPRA-required inventories of Native American human remains and associated funerary objects	Affected Indian tribes	NAGPRA, 25 U.S.C. 3003 (d)
Notification	Summarizing unassociated funerary objects, sacred objects, and objects of cultural patrimony	Affected Indian tribes	NAGPRA, 25 U.S.C. 3004 (a)
Consultation	Prior to removing Native American human remains or cultural items from Federal lands	Appropriate Indian tribe	NAGPRA, 25 U.S.C. 3002 (c) (2)
Consultation	Prior to completing inventories of human remains and associated funerary objects in an agency's possession	Tribal government or traditional religious leaders	NAGPRA, 25 U.S.C. 3003 (b) (1) (A)
Consultation	Determining the cultural affiliation of unassociated funerary objects, sacred objects, and objects of cultural patrimony	Tribal government or traditional religious leaders	NAGPRA, 25 U.S.C. 3004 (b) (1) (B)
Consultation	Determining where and in what manner to return cultural items or human remains	Lineal descendent or Indian tribe	NAGPRA, 25 U.S.C. 3005 (a) (3)

The subsequently issued implementing regulations contained in 43CFR10, Subparts B and C, further delineate Federal agencies' responsibilities for consultation. Specifically, 43CFR10.5 requires consultation as part either the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands and lists the requirements that must be followed. Similarly, consultation requirements for Federal agencies and museums that possess or have control over human remains and objects included under the provisions of NAGPRA are spelled out in 43CFR10.8 (d) and 9 (b). It should be noted that consultation between federal agencies and Indian tribes is also called for in other historic preservation statutes and regulations, notably the National Historic Preservation Act (NHPA) and the Archaeological Resources Protection Act (ARPA), and consultation requirements may overlap between these statutes and NAGPRA depending on the specific circumstances of individual cultural resource undertakings.

Points of contact for activities requiring consultation under NAGPRA for the four tribes with cultural resource interests at the Hanford Site are listed in Table 2.

Table 2. Indian tribal points-of-contact for Hanford Site NAGPRA consultations and related technical interactions.

<b>Indian Tribe/address</b>	<b>Tribal NAGPRA POC/ Phone/FAX</b>	<b>Tribal Technical POC/ Phone/FAX</b>	
Confederated Tribes of the Umatilla Indian Reservation  P.O. Box 638 Pendleton, OR 97801	Gary Burke  Phone: (541) 276-3165	Jeff Van Pelt  Armand Minthorn  Julie Longenecker	Phone: (541) 276-3629 Fax: (541) 276-0540  Phone: (541) 276-3165 Fax: (541) 276-3095  Phone: (509) 946-1859 Fax: (509) 946-1954
Nez Perce Tribe  Main and Beaver Grade P.O. Box 635 Lapwai, ID 83540	Samuel N. Penney  Phone: (208) 843-2253	Vera Sonneck  Rico Cruz	Phone: (208) 843-7375 Fax: (208) 843-7419 Phone: (208) 843-7375 Fax: (208) 843-7329
Wanapum  Grant County Public Utilities District 30 "C" Street P.O. Box 878 Ephrata, WA 98823	Lenora Seelatsee  Phone: (509) 754-3541 Ext. 3172 Fax: (509) 766-2522	Rex Buck, Jr.	Phone: (509) 754-5057 Ext. 2797 Fax: (509) 754-5074
Yakama Nation  P.O. Box 151 Toppenish, WA 98948	Russell Jim  Phone: (509) 452 2502 Fax: (509) 452-2503	Russell Jim	Phone (509) 452-2502 Fax (509) 452-2503
Confederated Tribes of the Colville Reservation  P.O. Box 150 Nespelem, WA 99155	Adeline Fredin  Phone: (509) 634-2692 Fax: (509) 634-2694	Adeline Fredin  Phone: (509) 634-2692 Fax: (509) 634-2694	

### **3.0 NAGPRA COMPLIANCE AT THE HANFORD SITE**

Several actions have occurred at the Hanford site over the past ten years as a result of the passage of NAGPRA and implementation of its requirements. Fortunately, relatively few human remains or funerary objects have resulted from the limited amount past archaeological work at the site since 1943. As is discussed below, one archaeological undertaking within the Hanford Site conducted in 1926 by an archaeologist with the Smithsonian Institution in Washington, D.C. did result in the excavation of several prehistoric graves and associated funerary items.

#### **3.1 Inadvertent Discoveries**

To date, two cases of inadvertent discovery have occurred at the Hanford Site that initiated consultation and protection activities. The first of these took place in the spring of 1994 when construction activities at the then proposed location of the Environmental Molecular Sciences Laboratory (EMSL), just south of the 300 Area facilities. Monitoring of the initial construction activity by a Hanford archaeologist encountered several Native American burials, causing the construction work to immediately cease. Following consultation with the affected Indian tribes, DOE-RL relocated the site for the proposed laboratory and undertook restoration of the original construction site. Resiting of the EMSL complex involved selection of a new building site, preparation of an environmental assessment to evaluate potential impacts of resiting, construction and operation of the laboratory at the new location, and many technical studies at the new site.

A second instance occurred in the Fall of 1996 when archaeological monitoring of exposed and eroding cutbanks along the Columbia River revealed an exposed human interment on the left bank of the river, across from the old White Bluffs townsite. NAGPRA consultation ensued; however the following year continued erosion of the bank during springtime runoff caused the remaining *in situ* skeletal elements to fall onto the beach.

#### **3.2 Summaries and Inventories of the Hanford Archaeological Collection**

By 1994, most archaeological collections resulting from past work on the Hanford Site had been coalesced into a curation facility, part of the Pacific Northwest National Laboratory's Hanford Cultural Resources Laboratory. To provide DOE-RL with information it needed to comply with the provisions of NAGPRA that call for notification, consultation, and possible repatriation of human remains and associated funerary objects, a summary of the collection was prepared in November 1993, followed by an inventory of human remains in November of 1995. In 1995, a letter followed this notification reporting on the repatriation activities at the Hanford Site. An additional written summary of the human remains in the HCRL collection was completed in 1998 (Nickens 1998). Tribes were asked to assist in determining the cultural affiliation of human remains held in the HCRL collection. Human remains from 45BN477 were repatriated to the Wanapum in May 2000, and additional remains were transferred to the tribes in April 2001, following National Park Service procedures.

#### **3.3 Smithsonian Materials**

Excavations at the Wahluke archaeological site in 1926 by Smithsonian archaeologist Herbert Krieger resulted in sizable collection of human skeletal materials and burial offerings. Housed at the Smithsonian's National Museum of Natural History since that time, this inventory and repatriation of this collection of items that would normally fall under NAGPRA is instead handled via provisions in the National Museum of the American Indian Act (as amended in 1996). Thus, while NAGPRA applies to museums, universities, and federal agencies, the Smithsonian is specifically excluded from NAGPRA,



meaning that human remains and associated grave objects from Wahluke Site be coordinated directly between the Indian tribes and the Smithsonian Institution.

#### **4.0 ACTION PLAN FOR HANFORD SITE NAGPRA COMPLIANCE**

Compliance with NAGPRA and 43CFR10 at Hanford occurs in concert with DOE-RL's adherence to other cultural resource protection statutes and regulations, specifically the National Historic Preservation Act (NHPA) and its implementing regulation 36CFR800, and the Archaeological Resources Protection Act (ARPA).

##### **4.1 DOE-RL Policy on Human Burial Remains**

The intention of the DOE-RL Cultural Resource Program is that priority will be given to preservation of all Native American human remains and associated funerary objects in place. No human burial materials should be removed unless it is necessary for their survival. There may be circumstances where it may be necessary to intentionally excavate human remains to protect them from destruction by construction activities or natural erosion. If removal of human remains is necessary, during excavation and recording, the burial materials will be treated with dignity and respect, and will not be placed on display or within public view.

Because of historical operations in support of national defense missions conducted at the Hanford Site over the past 50 years, there is potential radiological contamination of Native American human remains and other cultural items to have occurred. Although the discovery and recovery of such remains falls partially under NAGPRA, other regulations pertaining to public health and safety issues may have to be considered during the consultation efforts and in the ultimate disposition of specific cases. Following DOE-HQ guidance, in the event of discovery of radiologically contaminated human remains and associated funerary objects at the Hanford Site, DOE-RL will consult with the affected Indian tribes to achieve compliance with all relevant statutes and regulations while ensuring appropriate respect for the human remains and cultural objects while, at the same time, ensuring protection of the public's health.

##### **4.2 Intentional Excavations**

Intentional excavation of human remains and objects is permitted under the provisions of NAGPRA, in conjunction with requirements of ARPA and its implementing regulations. Applications for ARPA permits by non-DOE or non-DOE-contracted entities will be carefully reviewed by the Hanford Site Cultural Site Protection Officer, in direct consultation with the affected Indian tribes. All ARPA permit applications must include a written plan that includes discussion of and supported arguments for or against the potential for encountering human remains during any subsurface excavations, and include a detailed plan for handling such discoveries in the event that human remains should be encountered. It will be the responsibility of the Site Cultural Protection Officer to ensure that the ARPA permit is properly conditioned to ensure protection and proper disposition of human remains and associated artifacts, and to ensure that conditions of the ARPA permit are followed by the applicant.

##### **4.3 Inadvertent Discoveries**

An inadvertent discovery of human remains and/or objects that could potentially fall under the provisions of NAGPRA can occur in a variety of ways at the Hanford Site, from accidental uncovering during construction or site cleanup activities to exposure by natural erosion. Managers should be aware that information pertaining to an inadvertent discovery could be generated from several sources, including cultural resource monitoring of construction projects or other programmatic cultural resource monitoring

efforts to discovery by site workers or members of the general public. The potential for discoveries along the Columbia River by the public has been highlighted in recent years by several similar cases in the Tri-Cities area, and has a higher potential as public use of the Hanford Reach increases.

In accordance with NAGPRA requirements and DOE-RL policies, there are a number of sequential actions that come into play. These are listed as follows in roughly chronological order, although some overlap will occur in the overall process.

- Discovery
- Cessation of activity, if on-going
- Protection of Discovered Items
- Immediate notification of appropriate parties (DOE-HQ, DOE-RL, affected Indian tribes, Benton County Sheriff's Office, appropriate county coroner)
- Professional evaluation of discovery
- Initiation of consultation with affected Indian tribes
- Resumption of activity, if applicable

#### **4.3.1 Discovery**

All inadvertent discoveries of recognized or potential human skeletal remains will be immediately reported to the responsible manager or supervisor. Depending on the circumstances of the discovery, an inadvertent discovery could be made through any one of several situations – during cultural resources monitoring of construction activities; chance discoveries by workers during non-monitored construction; or a report of possible human skeletal materials from any non-construction area within the site.

Until a final evaluation can be made, all reports of potential NAGPRA discoveries will be taken seriously and dealt with expeditiously by all personnel involved in the discovery.

#### **4.3.2 Cessation of Activity**

If applicable, e.g., the inadvertent discovery occurs in connection with an on-going activity, responsible personnel will take measures to cease activity in the area where the discovery is made. Work will not proceed until proper notifications have been made, and a full professional evaluation of the nature of the discovery has been completed.

#### **4.3.3 Protection of Discovered Items**

Providing protection to the discovered remains is initially the responsibility of the discoverers, if during an on-going activity. In addition to cessation of all construction activity, on-site workers will provide initial security by both avoiding the discovery site proper, and by ensuring that other personnel do not intrude on to the discovery site. All cultural items are to be left in place, without further disturbance, and a temporary perimeter (flagging tape, stakes, etc.) may be established, if appropriate, until notifications have been made and a cultural resources professional has appeared. Covering the exposed remains with a tarp or piece of plastic may be appropriate.

Depending on the outcome of the professional evaluation and the sensitivity of the discovery, longer-term protection may be required in the form of on-site guards and/or periodic patrols. It may also be necessary to establish additional security perimeters, and access control to the area.

#### 4.3.4 Notification

Depending on the circumstances of the discovery, notification may take several avenues. For example, if made during monitoring of construction, either by an archaeologist or a site worker, the initial notification will be to the DOE/RL Cultural and Historic Resources Program Manager. Other feasible avenues of notification include a site worker notifying their supervisor or site security or a member of the public notifying the sheriff's department or the county coroner.

Key notification is to the responsible manager at DOE-RL, the SHO, who will coordinate subsequent notifications, as necessary, following the professional evaluation of the discovery.

Tables 3 and 4 list the points of contact at the DOE-RL and county offices.

Table 3. Department of Energy Points of Contact for NAGPRA actions.

Office	Point of Contact	Phone
DOE-HQ Federal Preservation Officer	Skip Gosling	Phone: (202) 586-5241
DOE-RL Cultural Resources Program Manager	Annabelle Rodriguez	Phone: (509) 372-0277 Cell Phone: (509) 539-0714
Hanford Cultural Resources Laboratory Manager	Darby Stapp	Phone: (509) 373-2894
DOE-RL Hanford Emergency Services Division	Ricky Stutheit	Phone: (509) 372-3005

Table 4. County Points of contact for Hanford Site NAGPRA actions.

Office	Point of Contact	Phone
Benton County Sheriff's Department (Hanford Office)	Lieutenant Jerry Hatcher	Phone: (509) 376-1022
Benton County Coroner	Floyd E. Johnson	Phone: (509) 736-2720
Franklin County Coroner	Dan Blasdel	Phone: (509) 546-5885
Grant County Coroner	Jerry Jasman	Phone: (509) 765-7601

#### 4.3.5 Professional Evaluation

As soon as practicable following the discovery and initial notification, the discovery will be evaluated to verify that the skeletal remains are human and that the discovery falls under the provisions of NAGPRA. Generally, a HCRL archaeologist will make the initial determination. Depending on the nature of the find, a forensic expert, with appropriate training in human osteology made be required to evaluate the discovery and its potential age. If the skeletal remains are not Native American, but are historic, a determination will be made as to whether they fall within the jurisdiction of law enforcement. This determination will be collectively reached by the project archaeologist/physical anthropologist, the SPO, and the appropriate county officials.

#### **4.3.6 Consultation with Affected Tribes**

If the discovery is evaluated as being Native American, and therefore subject to NAGPRA, the DOE-RL Cultural and Historic Resources Program Manager will initiate consultation and additional notifications as per requirements in 43CFR10, Section 10.4. Notifications include the DOE Federal Preservation Officer and the State Historic Preservation Officer (SHPO). Within 24 hours, the DOE-RL Cultural and Historic Resources Program Manager will telephonically notify tribal technical contacts (Table 2) and within three working days will provide certified written notification to the designated tribal NAGPRA points of contact. As soon as practicable, an emergency meeting with designated tribal personnel will be held to continue NAGPRA formal consultation, and to develop a coordinated plan of action for disposition of the inadvertent discovery.

#### **4.3.7 Resumption of Activity**

If the inadvertent discovery occurred as a result of an on-going activity such as construction, resumption of the activity will depend on the consultation process and the overall significance of the discovery. NAGPRA and 43CFR43 provide for resumption of the activity 30 days after the certified notification of the discovery. However, resumption may occur at an earlier date if a written, binding agreement is executed between DOE-RL and the affected Indian tribes for the mitigation of the impacts to the remains.